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16 UNITED STATES OF AMERICA

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18 **UNITED STATES DISTRICT COURT**
19 **NORTHERN DISTRICT OF CALIFORNIA**

20 THE UNITED STATES OF AMERICA,) COMPLAINT
21 Plaintiff,) Case No.
22 v.)
23 JACK NOBLE,)
24 Defendant.)
25 _____)

COMPLAINT

The United States of America, through its undersigned attorneys, by the authority of the Attorney General and at the request of the Administrator of the United States Environmental Protection Agency (“EPA”), alleges as follows:

NATURE OF THE ACTION

1. This is a civil action commenced under section 309(b) and (d) of the Clean Water Act (“CWA”), 33 U.S.C. § 1319(b) and (d), to obtain injunctive relief and civil penalties against Jack Noble (“Defendant”) for the discharge of pollutants, including dredged or fill material, into waters of the United States in Humboldt County, California, without authorization by a permit issued by the United States Army Corps of Engineers (“Corps”), in violation of CWA section 301(a), 33 U.S.C. § 1311(a).

2. The United States seeks: (a) injunctive relief to prohibit the Defendant from further discharging pollutants, including dredged or fill material, into waters of the United States without a permit in violation of CWA section 301(a), 33 U.S.C. § 1311(a); (b) injunctive relief to require Defendant to restore and mitigate the damage caused by his unlawful activities; (c) an order requiring Defendant to pay civil penalties as provided in CWA section 309(d), 33 U.S.C. § 1319(d); and (d) such other relief as the Court may deem appropriate.

JURISDICTION, VENUE, INTRADISTRICT ASSIGNMENT

3. This Court has jurisdiction over the subject matter of this action pursuant to CWA section 309, 33 U.S.C. § 1319, and 28 U.S.C. §§ 1331, 1345, and 1355.

4. Venue is proper in the Northern District of California pursuant to CWA section 309(b), 33 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c), because Defendant conducts business in and resides in this District, the waters of the United States into which pollutants were discharged are located in this District, and the events giving rise to these claims occurred in this District.

5. Notice of the commencement of this action is being provided to the State of California pursuant to CWA section 309(b), 33 U.S.C. § 1319(b).

6. This action arises in Humboldt County.

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THE PARTIES

7. Plaintiff in this action is the United States of America. Authority to bring this action is vested in the United States Department of Justice pursuant to 28 U.S.C. §§ 516 and 519, and 33 U.S.C. § 1366.

8. Defendant Jack Noble is a private individual who resides in Humboldt County, California.

9. At all times relevant to the Complaint, Defendant owned, leased and/or otherwise controlled the real property that is the subject of this Complaint and/or otherwise controlled and/or participated in the activities relevant to this Complaint.

10. Although Jack Noble is the only named defendant at this time, the United States may seek to amend this Complaint to add additional defendants, including Van Duzen River Ranch, as appropriate based on information obtained during discovery regarding their involvement with or responsibility for the CWA violations alleged in this Complaint

STATUTORY BACKGROUND

11. CWA section 101(a), 33 U.S.C. § 1251(a), provides that “[t]he objective of this chapter is to restore and maintain the chemical, physical and biological integrity of the nation’s waters.”

12. CWA section 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of pollutants into navigable waters except in compliance with, *inter alia*, a permit issued by the Corps pursuant to CWA Section 404, 33 U.S.C. § 1344.

13. CWA section 404(a), 33 U.S.C. § 1344(a), authorizes the Corps to issue permits for the discharge of dredge or fill material at specified disposal sites, after notice and opportunity for public comment.

14. CWA section 502(5), 33 U.S.C. § 1362(5), defines “person” to include “an individual [or] corporation.”

15. CWA section § 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

16. CWA section 502(6), 33 U.S.C. § 1362(6), defines “pollutant” to include, *inter alia*, biological materials, dredged spoil, rock, waste, and sand.

17. CWA section 502(14), 33 U.S.C. § 1362(14), defines “point source” to include “any discernible, confined and discrete conveyance...from which pollutants are or may be discharged.”

1 18. CWA section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the
2 United States, including the territorial seas.”

3 19. 33 C.F.R. § 328.3(a), and 40 C.F.R. § 232.2 define “waters of the United States” to include, *inter*
4 *alia*: all waters which are currently used, were used in the past, or may be susceptible to use in interstate
5 or foreign commerce (“traditional navigable waters”) and tributaries of traditional navigable waters.¹

6 20. CWA section 309(b), 33 U.S.C. § 1319(b), authorizes the commencement of a civil action for
7 appropriate relief, including a permanent or temporary injunction, against any person who, *inter alia*,
8 violates CWA Section 301(a), 33 U.S.C. § 1311(a), by discharging dredged or fill material without
9 obtaining a permit issued by the Corps pursuant to CWA section 404, 33 U.S.C. § 1344.

10 21. CWA section 309(d), 33 U.S.C. § 1319(d), provides that any person who violates CWA section
11 301(a), 33 U.S.C. § 1311(a) shall be subject to a civil penalty not to exceed \$25,000 per day for each
12 violation.

13 22. 40 C.F.R. § 19.4, adjusts the \$25,000 amount provided in CWA section 309(d), 33 U.S.C. §
14 1319(d), for inflation, to \$37,500 per day for violations that occurred after January 12, 2009, and to
15 \$51,570 per day for violations that occurred after November 2, 2015.²

16 23. Each day that dredged or fill material remains in the place where it was discharged without
17 authorization constitutes an additional and continuing violation of CWA section 301(a), 33 U.S.C. §
18 1311(a).

19 **GENERALLY APPLICABLE ALLEGATIONS**

20 **Location of the CWA Violations**

21 24. This case involves the discharge of pollutants by Defendant Jack Noble into the Van Duzen
22 River, approximately between geographic coordinates 40.530028°, -124.107627° and 40.528706°, -
23 124.057751°, in Humboldt County, California.

24
25 ¹ These regulations have since been amended by the “Clean Water Rule,” 80 Fed. Reg. 37,054
26 (June 29, 2015), but the Clean Water Rule has been stayed pending resolution of challenges to the
27 revised rule. *See In re EPA*, 803 F.3d 804 (6th Cir. 2015).

28 ² The latest penalty adjustment for inflation applies to penalties assessed as of August 1, 2016,
for violations that occurred after November 2, 2015. *See* 81 Fed. Reg. 43094 (July 1, 2016).

1 25. The CWA violations alleged in this Complaint occurred on real property in and along the Van
2 Duzen River in Humboldt County, California, close to Hydesville and Fortuna.

3 26. This real property shares approximately 5.5 miles of banks with the Van Duzen River.

4 27. Humboldt County records indicate that this real property includes Humboldt County parcels with
5 Assessor Parcel Numbers (“APN”) 204-101-003, 204-101-002, 204-101-024, 204-101-026, 204-111-
6 011, 204-111-005, 204-111-006, 204-071-010, 204-071-005, and 204-063-011.

7 28. Jack Noble owns, leases, operates, or otherwise controls this real property.

8 29. For shorthand purposes, this Complaint refers to this real property referenced in Paragraphs 24-
9 28 above as “the Site.”

10 **Waters of the United States**

11 30. From the Site, the Van Duzen River flows approximately 3 miles west to the Eel River, which
12 then flows approximately 13 miles northwest to the Pacific Ocean.

13 31. Exhibit 1 to this Complaint is a map that fairly and accurately depicts the flow path of the Van
14 Duzen River and the Eel River from the Site to the Pacific Ocean.

15 32. The Van Duzen River is designated a “Wild and Scenic River” pursuant to California Resources
16 Code section 5093.545(g).

17 33. The Van Duzen River is designated a “Wild and Scenic River” pursuant to the federal Wild and
18 Scenic Rivers Act. 16 U.S.C. § 1271 *et seq.*

19 34. The Van Duzen River is 73.5 miles long.

20 35. The Van Duzen River basin encompasses approximately 429 square miles.

21 36. The Van Duzen River is currently used in interstate commerce.

22 37. The Van Duzen River was used in the past in interstate commerce.

23 38. The Van Duzen River is susceptible for use in interstate commerce.

24 39. The Van Duzen River is navigable in fact.

25 40. The Van Duzen River has a bed, bank, and an ordinary high water mark.

26 41. The Van Duzen River contributes to the flow of the Eel River.

27 42. The Van Duzen River flows perennially.

28 43. The Eel River is 196 miles long.

1 44. The Eel River drains 3,684 square miles in five counties in California.

2 45. The Eel River has been designated as a “Wild and Scenic River” pursuant to the federal Wild
3 and Scenic Rivers Act. 16 U.S.C. § 1271 *et seq.*

4 46. The Eel River is currently used in interstate commerce.

5 47. The Eel River was used in the past in interstate commerce.

6 48. The Eel River is susceptible for use in interstate commerce.

7 49. The Eel River is navigable in fact.

8 50. Under the Rivers and Harbors Act, 33 U.S.C. § 401 *et seq.*, the Corps has designated that at least
9 the first 7 miles of the Eel River, from the Pacific Ocean, is navigable. 33 C.F.R. § 329.16.

10 51. The Eel River has a bed, bank, and an ordinary high water mark.

11 52. The Eel River flows perennially.

12 53. The Van Duzen River and Eel Rivers are designated critical habitat for, *inter alia*, three
13 threatened species: California Coastal ESU Chinook Salmon (*Oncorhynchus tshawytscha*), Southern
14 Oregon/Northern California Coast ESU Coho Salmon (*Oncorhynchus kisutch*), and Northern California
15 DPS Steelhead (*Oncorhynchus mykiss*). 50 C.F.R. § 223.102(e). The Endangered Species Act (“ESA”)
16 defines “critical habitat” for a threatened or endangered species, in pertinent part, as “the specific areas
17 within the geographical area occupied by the species, at the time it is listed in accordance with the
18 provisions of section 1533 of this title, on which are found those physical or biological features (I)
19 essential to the conservation of the species and (II) which may require special management
20 considerations or protections”; and “specific areas outside the geographical area occupied by the species
21 at the time it is listed in accordance with the provisions of section 1533 of this title, upon a
22 determination by the Secretary of the Interior that such areas are essential for the conservation of the
23 species.” 16 U.S.C. § 1532(5)(A)(i), (ii). The ESA defines “endangered species” in pertinent part as
24 “any species which is in danger of extinction throughout all or a significant portion of its range.” *Id.* §
25 1532(6). The ESA defines “threatened species” as “any species which is likely to become an endangered
26 species within the foreseeable future throughout all or a significant portion of its range.” *Id.* § 1532(20).
27 The ESA defines “species” to include “subspecies” and certain “distinct population segment[s].” *Id.* §
28 1532(16).

1 54. Coho and Chinook salmon and Steelhead are “anadromous,” meaning that they hatch in
2 freshwater, spend most of their life in oceanic waters, and return to freshwater to spawn.

3 55. Designated critical habitat for the Chinook includes, *inter alia*, the Eel River upstream to the Van
4 Duzen River, latitude 40.5337°, longitude – 124.1262° and the Van Duzen River, latitude 40.5337°,
5 longitude -124.1262°, upstream to endpoints in Yager Creek, latitude 40.5583°, longitude -124.0571°.
6 50 C.F.R. § 226.211(f)(5).

7 56. Exhibit 2 to this Complaint is a true and correct copy of a map codified at 50 C.F.R. §
8 226.211(f), which depicts areas of designated critical habitat for the Chinook, which includes the Site.

9 57. Designated critical habitat for the Coho includes accessible reaches of all rivers between the
10 Mattole River in California and the Elk River in Oregon and includes the water, substrate, and adjacent
11 riparian zone, which includes the Site. 50 C.F.R. § 226.210.

12 58. Designated critical habitat for the Steelhead includes, *inter alia*, the Eel River, latitude 40.6275°,
13 longitude -124.2520° upstream to the Van Duzen River, latitude 40.5337°, longitude -124.1262°; Van
14 Duzen River, latitude 40.5337°, longitude -124.1262° upstream to Yager Creek, latitude 40.5583°,
15 longitude -124.0577°; and the Van Duzen River, latitude 40.4942°, longitude -123.9720° upstream to
16 Little Larrabee Creek, latitude 40.4708°, longitude -123.7395° to the Van Duzen River latitude
17 40.4820°, longitude -123.6629°. 50 C.F.R. § 226.211(g)(5).

18 59. Exhibit 3 to this Complaint is a true and correct copy of a map codified at 50 C.F.R. 226.11(g),
19 which depicts areas of designated critical habitat for the Steelhead, which includes the Site.

20 60. Alterations in the timing and volume of water flows and sediment transport in the Van Duzen
21 River and the Eel River alter conditions for maintaining water quality.

22 61. Alterations in the morphology, timing, and volume of water flows and sedimentation in the Van
23 Duzen River and the Eel River alter conditions for maintaining suitable habitat for support of several
24 classes of aquatic faunal species including adult and juvenile fishes.

25 62. At all times relevant to the CWA violations alleged in this Complaint, the Van Duzen River and
26 Eel River constitute “waters of the United States” and “navigable waters” within the meaning of 33
27 U.S.C. § 1362(7).
28

1 63. The Van Duzen River is a traditional navigable water within the meaning of 33 C.F.R. §
2 328.3(a)(1) from at least the Site to its confluence with Eel River.

3 64. The Eel River is a traditional navigable water within the meaning of 33 C.F.R. § 328.3(a)(1)
4 from at least its confluence with the Van Duzen River to the Pacific Ocean.

5 65. The Van Duzen River is a “tributary” of the Eel River within the meaning of 33 C.F.R. §
6 328.3(a)(5).

7 66. The Van Duzen River is a permanent, continuously flowing body of water.

8 67. The Van Duzen River, either alone or in combination with similarly situated lands in the region,
9 significantly affects the chemical, physical, or biological integrity of the Eel River.

10 **COUNT I**

11 68. The allegations in Paragraphs 1 through 67 are adopted and reincorporated by reference.

12 69. Defendant Jack Noble is a “person” within the meaning of CWA section 502(5), 33 U.S.C. §
13 1362(5).

14 70. Beginning approximately 2013 and continuing until at least this month, at times and locations
15 best known to Defendant, Defendant and/or persons acting on his behalf operated an excavator and/or
16 other earthmoving equipment at the Site that the Defendant owned or otherwise controlled.

17 71. Defendant either owned, leased, or otherwise controlled the property on which each unauthorized
18 discharge of dredged or fill material into waters of the United States occurred.

19 72. As operated, this equipment constituted a “point source” within the meaning of CWA section
20 502(14), 33 U.S.C. § 1362(14).

21 73. This equipment operated below the ordinary high water mark of the Van Duzen River, a water of
22 the United States.

23 74. Operation of this equipment resulted in the placement of fill material, including, among other
24 things, concrete, asphalt, rebar, trees and vegetation, gravel, excavated soil and other construction
25 debris, all of which constitute “pollutants” as defined in CWA section 502(6), 33 U.S.C. § 1362(6), into
26 waters of the United States, namely the Van Duzen River.

27 75. Operation of this equipment resulted in the alteration of the river banks and in construction of
28 roads, levies, berms, and groins in Van Duzen River.

1 76. Operation of this equipment had the effect of replacing one or more portions of waters of the
2 United States with dry land.

3 77. Operation of this equipment had the effect of changing the bottom elevation of one or more
4 portions of waters of the United States.

5 78. Operation of this equipment resulted in the “discharge of any pollutant” within the meaning of
6 33 U.S.C. § 1311(a).

7 79. Defendant’s unlawful activities have resulted in the discharge of pollutants in at least 3,595
8 linear feet of the Van Duzen River.

9 80. At no time did Defendant, or any person on his behalf, apply for, secure, or comply with a CWA
10 section 404 permit to discharge dredged or fill material into waters of the United States as required by
11 CWA sections 301(a) and 404, 33 U.S.C. §§ 1311(a) and 1344.

12 81. Defendant has violated and continues to violate CWA section 301(a), 33 U.S.C. § 1311(a), by his
13 unauthorized discharges of dredged and fill material into the Van Duzen River, a water of the United
14 States, at the Site.

15 82. Each day that such material remains in place constitutes a separate violation of CWA section
16 301(a), 33 U.S.C. § 1311(a).

17 83. Unless enjoined, Defendant is likely to continue to discharge dredged or fill material into, or
18 allow discharged dredged or fill material to remain in, waters of the United States at the Site, in violation
19 of CWA section 301(a), 33 U.S.C. § 1311(a).

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court
22 order the following relief:

- 23 1. Permanently enjoin Defendant from further discharges of dredged or fill material or other
- 24 pollutants into any waters of the United States except as in compliance with the CWA;
- 25 2. Compel Defendant, at Defendant’s own expense and at the direction of EPA, to restore the
- 26 impacted waters of the United States, and/or mitigate for impacted waters of the United States, as
- 27 appropriate, including payment for off-site mitigation;
- 28 3. Assess and direct Defendant to pay civil penalties;

- 1 4. Award costs and disbursements in this action to the United States; and
- 2 5. Grant the United States such other relief as the Court may deem just and proper.

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4 Respectfully submitted October 26, 2016 by:

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